

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WILLIAM EWING,

Case No. 6:18-cv-01626-MK
ORDER

Plaintiff,

v.

CITY OF TOLEDO, CRAIG MARTIN,
in his individual capacity, BILLIE
JO SMITH, in her individual capacity,
PAUL OSTERLUND, in his individual
capacity, DAVID JAMES ROBINSON,
in his individual capacity,

Defendants,

AIKEN, District Judge.

This Court previously stayed consideration of Magistrate Judge Mustafa Kasubhai's initial Findings and Recommendation ("F&R") (doc. 27) recommending that defendant's motion to dismiss (doc. 11) be GRANTED in part and DENIED pending supplemental briefing. Magistrate Judge Kasubhai then issued a second F&R (doc. 37) recommending that this case be STAYED, which this Court adopted. (doc. 45) The Court lifted that stay on January 28, 2020, when the parties informed this Court that the Oregon Supreme Court had denied review of an Oregon Appeals

Court decision in *Burley v. Clackamas County, et al.*, S066945. (doc. 46.) Magistrate Judge Kasubhai then entered an Amended F&R (doc. 47) on February 21, 2020, recommending again that defendants' Motion to Dismiss (doc. 11) be granted in part and denied in part. This matter is now before me. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

No objections have been timely filed. Although this relieves me of my obligation to perform a *de novo* review, I retain the obligation to "make an informed, final decision." *Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983), *overruled on other grounds*, *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003) (en banc). The Magistrates Act does not specify a standard of review in cases where no objections are filed. *Ray v. Astrue*, 2012 WL 1598239, *1 (D. Or. May 7, 2012). Following the recommendation of the Rules Advisory Committee, I review the F&R for "clear error on the face of the record[.]" Fed. R. Civ. P. 72 advisory committee's note (1983) (citing *Campbell v. United States District Court*, 501 F.2d 196, 206 (9th Cir. 1974)); see also *United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) (stating that, "[i]n the absence of a clear legislative mandate, the Advisory Committee Notes provide a reliable source of insight into the meaning of" a federal rule). Having reviewed the file of this case and Magistrate Judge Kasubhai's order, I find no clear error.

Thus, the Court adopts Magistrate Judge Kasubhai's Amended F&R (doc. 47) in its entirety. Defendant's Motion to Dismiss (doc. 11) is granted in part and denied

in part as outlined in the F&R. Plaintiff is granted leave to file a Second Amended Complaint within 30 days of this order.

IT IS SO ORDERED.

Dated this 10th day of April 2020.

/s/Ann Aiken
Ann Aiken
United States District Judge